



UNIVERSITY OF TORONTO
FACULTY OF LAW

ADVANCED CORPORATE LAW & SECURITIES REGULATION

Professor Anita Anand

VOLUME 1

Winter 2012

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ADVANCED CORPORATE LAW & SECURITIES REGULATION
LAW229H1F (Tuesdays, 10:30 – 12:20 FA2)
WINTER TERM 2012

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Course Description

This course explores in greater depth topics explored in Business Organizations and Securities Regulation. Discussion and analysis will centre on contemporary issues in the regulatory regime, such as: corporate governance, securities offerings, acquisition transactions, enforcement issues and the role of the securities regulator. The focus of the course is on statutory and case materials combined with an analysis of relevant academic writings and other secondary materials. In general, the course seeks to integrate a sound understanding of securities regulation and corporate law doctrine with a critical understanding of the policy issues involved. To that end, the course will probe the various interests of relevant stakeholders as they pertain to the issues under discussion and the extent to which the law should protect these interests.

Materials

There will be limited readings assigned for each class. The readings are contained in a cerlox bound volume and are also posted on the Blackboard website. It is not necessary to bring a laptop to class and to take copious notes. The purposes of the seminar to engage you at a high level in the topic for discussion each week.

Evaluation

Students will write a paper of approximately 20-25 pages (worth 80% of the mark) on a topic of their choice (to be approved by the instructor). The other 20% of the student's mark will be based on class participation/contributions to class discussion.

Preparation for Class

In order to get the most out of the class discussion, please complete the assigned readings and review the relevant sections of the legislation. The class is intended to be a discussion of central issues in corporate law and securities regulation. The readings are aimed at informing this discussion.

Questions and Meetings

Over the course of the term, you may wish to ask me questions or to speak with me about the course material. I am always willing to respond to these types of queries. Please feel free to raise your questions before or after class, via email or in person.

Reading List

On the following pages, I have attached a reading list for the course. There is not one specific topic on a national securities regulator but this issue will permeate the discussion throughout the course.

January 10: Introduction Philosophical Underpinnings

What are the multifaceted purposes underpinning regulation of the capital markets?

Why do we regulate corporate law and securities regulation under differing regulatory regimes?

January 17: Prospectus Offerings and Disclosure Issues

Page 5

Guest: Alan Lenczner, Lenczner Slaght LLP Barristers

Anita Anand & Mary Condon, “Weather, Leather, and the Obligation to Disclose: *Kerr v. Danier Leather Inc.*” (2006) 44 Osgoode Hall LJ 727.

Page 6

Jeremy Fraiberg & Robert Yalden, “*Kerr v. Danier Leather Inc.*: Disclosure, Deference, and the Duty to Update Forward-Looking Information” (2006) 43 Can Bus LJ 106.

Page 19

Kerr v. Danier Leather Inc., 2007 SCC 44, 87 OR (3d) 398, 36 BLR (4th) 95, 231 O.A.C. 348.

Page 51

In the matter of the securities act, R.S.O. 1990, c. S.5, as amended, and,

In the matter of Coventree inc., Geoffrey Cornish and Dean Tai, 2011 LNONOSC 757

(2011), 34 OSCB 10209 (select paragraphs).

January 24: Surviving the Crisis – What is the Role of the Securities Regulator?

Page 79

Iman Anabtawi & Steven L. Schwarcz, “Regulating Systemic Risk: Towards an Analytical Framework” (2011) 86:4 Notre Dame L Rev 1349.

Page 80

Anita I. Anand, “Is Securities Regulation relevant to Systemic Risk?” (2010) 60 UTLJ 941.

Page 145

Factum of the Attorney General of Canada *In the matter of a Reference by the Governor in Council concerning the proposed Canadian Securities Act*, online: http://www.scc-csc.gc.ca/factums-memoires/33718/FM010_Attorney-General-of-Canada.pdf

Page 185

January 31: M&A and the after effects of Magna

Page 256

Speakers: Naizam Kanji and Erin O'Donovan, Corporate Finance Department, Ontario Securities Commission

In the Matter of Magna International Inc. (2010), 34 OSCB 1290, 2010 CarswellOnt 25810322.

Page 257

Magna International Inc. (Re), 2010 ONSC 4685, [2010] O.J. No. 3791, 101 O.R. (3d) 721, 267 O.A.C. 222, 75 B.L.R. (4th) 163, 2010 CarswellOnt 6651 (ONSupCtJusDivCt)

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Magna International Inc (Re), 2010 ONSC 4123, [2010] O.J No 3454 (ONSupCtJus).

Page 318

Magna International Inc. (Re), 2010 LNONOSC 439, 33 OSCB 6013, 72 B.L.R. (4th) 235, 2010 CarswellOnt 4416 (ONSecCom).

**(Available
on Black
Board)**

Anita I. Anand, "Was Magna in the Public Interest?" 2011 Osgoode Hall LJ [forthcoming]

Page 359

February 7: Advances in Protecting Investors' Interests

Page 391

Guest: Ermanno Pascutto, FAIR Canada

FAIR Canada, "Report Card 2008-11" (Toronto Ontario: April 5, 2011).

Page 392

FAIR Canada, "A Report on A Decade of Financial Scandals" (Toronto Ontario: February 2011) online: http://faircanada.ca/wp-content/uploads/2011/01/Financial-scandals-paper-SW-711-pm_Final-0222.pdf.

Page 423

FAIR Canada "Appendix A to A Report on A Decade of Financial Scandals" (Toronto Ontario: February 2011) online: http://faircanada.ca/wp-content/uploads/2011/02/List-of-Financial-Scandals-Appendix-A-IS-500pm_Final.pdf.

Page 464

February 14: Moving in on Insider Trading

Guest: Kelley McKinnon, Gowlings

Insider trading case study (materials to come).

February 21: Reading Week – no class

February 28: Self-regulation in Today's Market

Page 486

Guest: Susan Wolburgh Jenah, President and CEO, IIROC

Investment Industry Regulatory Organization of Canada, “Annual Report 2010-2011” online:

Page 501

http://www.iiroc.ca/English/NewsRoom/Publications/Documents/IIROC_AR_2011_EN.pdf

March 6 : Securities Regulators, Administrative Tribunals and Bifurcation

Page 525

Guest: Dean Lorne Sossin, Osgoode Hall Law School

The Honourable Coulter A Osborne, QC, Professor David J Mullan, Bryan Finlay, QC, “Report of the Fairness Committee to the Ontario Securities Commission” (March 5, 2004) online:

Page 526

http://www.investorvoice.ca/Research/Osborne_05Mar04.pdf

Philip Anisman, “The Ontario Securities Commission as Regulators: Adjuncation, Fairness, and Accountability,” in Anita I. Anand and William F. Flanagan, eds, *Proceedings of the 10th Queen’s Annual Law Symposium: Conflicts of Interest in Capital Market Structures* (Kingston, ON: Queen’s Annual Business Law Symposium, 2004).

Page 562

March 20: Enforcement Powers and Quasi-criminal litigation

Page 588

Anita I Anand, “Carving the Public Interest Jurisdiction in Securities Regulation: Contributions of Justice Iacobucci” (2007) 57 UTLJ 293.

Page 590

Mary Condon, “Rethinking Enforcement and Litigation in Ontario Securities Regulation” (2006) 32 Queen’s LJ 1.

Page 612

March 27: Intersections of Corporate and Securities Law

Page 648

Guest: Joseph Groia, Groia and Company Lawyers

Joe Groia & Linda Adams, “Searching for a Soul to Damn and a Body to Kick: The Liability of Corporate Officers and Directors”, in *Meredith Memorial Lectures 1990* (Cowansville, Quebec: Les Éditions Yvon Blais Inc 1990)

Page 650

R v Felderhof, 2007 ONCJ 345, [2007] OJ No 2974, 224 CCC (3d) 97, 75 WCB (2d) 46 (Ont CJ) (excerpts only)

Page 682

Cartaway Resources Corp., Re, [2004] 1 SCR 672 (SCC) .

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April 3: Wrap-up